

STATEMENT
OF
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TO
THE HOUSE SUBCOMMITTEE ON WATER RESOURCES AND
ENVIRONMENT
OF THE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES
REGARDING

Reauthorization of the Brownfields Program:
Successes and Future Challenges

June 8, 2006

Good morning, Mr. Chairman, members of the Committee. My name is Jonathan Philips and I am Senior Director of Cherokee Investment Partners based in Raleigh, North Carolina. Thank you for the opportunity to testify in support of reauthorizing the Small Business Liability Relief and Brownfields Revitalization Act.

Cherokee is the largest and most active private investment firm in the world specializing in the acquisition, cleanup and sustainable revitalization of brownfields. Since inception, we have acquired over 520 sites across North America and Europe. We are privileged to be fiduciaries of institutional capital providers to perform this important activity. We are not aware of any private organization in the world that voluntarily cleans up more pollution.

The Brownfields Act that we're here today to support has been an important first step in returning neighborhoods to healthy places where families can live and work. Brownfield revitalization catalyzes positive community transformation that extends well beyond the individually contaminated sites. This community transformation, and resulting ripple effect throughout

neighboring communities, writes new chapters of hope from the often sad histories of economic and environmental decline, and urban blight.

This Act includes important tools for local communities to assess contamination and start planning for redevelopment. And it includes important provisions regarding *bona fide* prospective purchasers. The dedicated team of staff at the U.S. EPA should be commended for their implementation of these critical programs.

A larger brownfield coalition, of which Cherokee is a member, has provided written testimony today detailing a number of specific issues that should be examined by this subcommittee as it considers reauthorization. There are many good suggestions in that statement. We would encourage members to specifically explore modifications that could be made to the existing definition of “brownfield” under the Act to bring in sites that are currently excluded under Section 101(39)(b). One example would be to enhance communities’ ability to prioritize sites for reuse, eliminate currently defined set-asides for certain types of sites – petroleum brownfields and sites acquired prior to the January 2002 initial enactment date -- and allow all brownfield sites (as defined broadly by 101(39)(a) to compete for program

resources and those legislative enactments that definitionally key off of section 101(39).

Another example is sustainability, as mentioned by Representative Schwartz a few moments ago. When we cleanup pollution below ground, what are we doing to protect our environment above ground when redeveloped? Can we afford to do only half the job? It has been widely cited that buildings account for roughly 50% of the energy consumption in this country. Let us create a positive mirror image and offer legislative incentives for sustainable development and greenbuilding. With this mirroring, we can replicate on top of the sites the same positive environmental impact that results from remediation below ground.

In our mind, there is no question that this Act should be reauthorized. From Cherokee's perspective, we need to go further.

If Congress wishes to seriously address this nation's brownfield crisis, we must develop additional federal incentives to draw private investment dollars to the more complex and economically less desirable sites. These are sites that are more complex, take longer to redevelop, involve significant liability

and cost overrun risks, and almost invariable lead to the various permutations on the same question that we hear so frequently from others in the traditional development world “Why should we invest in this site, given its risks, limitations, unknowns, additional costs and brain-damage required, when I can just develop the next farm on the proverbial “edge of town?” Congress has responded, not just with the Brownfield Act, but with important programs such as the 198 expensing provisions, recently created unrelated business income tax exemptions, and Representative Turner’s proposal to create transferable tax credits. Each of these hold tremendous promise for returning brownfield sites to productive use. The incentives the federal government provides can take many forms: direct funding, tax credits, loan guarantees to reduce the cost of debt-financed redevelopment, or other tools. Local and state governments can assist with expedited permitting and other tools to encourage brownfield redevelopment. What is important is that these incentives need to directly address the financial underpinnings of brownfield transactions.

In testimony before other subcommittees, I have encouraged members to think about brownfield sites as “under water” or “above water.” A site that is under water is a site that the marketplace will not redevelop on its own

given the cost of cleanup, the value of the property in a clean state, and various other factors. A site that is “above water” is likely to be cleaned up and revitalized by the private sector without government assistance.

Along this continuum there are some sites that are barely below water. These are sites that may be redeveloped during a favorable economic upturn or with a slight nudge from a federal, state or local incentive program.

Unfortunately, most of the sites we think of as brownfields are further underwater – many considerably so. Without significant public assistance, these sites will never be remediated by the private sector.

It is critical to note that these terms – under water and above water – take into account only what I’ll call for lack of a better term, “internal” costs and benefits of a developer. They do not reflect the various public benefits that development would bring, such as reduced pollution, more jobs, reduced sprawl, or increases in tax revenues.

One mission of government, then, must be to focus particularly on those properties that are under water from a market perspective and above water

from a public perspective. For those sites, we need an aggressive mix of local, state and federal programs to encourage the private markets to undertake the task of remediating pollution and redeveloping sites. We encourage Congress to take specific notice of the significant challenges faced by private or public actors seeking to perform land assembly for large brownfield revitalization, where master planning is the most effective way to move large brownfield and underutilized lands from blight to robust productivity. Without effective tools to control brownfield or blighted zones, these sites will sit indefinitely.

Having said that, we appreciate that it is extremely difficult to discuss brownfield incentives in the abstract. Without looking at actual sites and running the numbers on actual projects, it is almost impossible to assess how well an incentive program will function once it is implemented.

Toward that end, let me make a novel proposal on behalf of Cherokee Investment Partners.

Our company is willing to provide each member of this committee with an economic assessment of the redevelopment potential of the top-priority

brownfield site in your district. Even though these sites may not meet our investment criteria, we will volunteer our staff resources to help you and your communities evaluate your top-priority brownfield site as a way of helping develop a set of real-world examples on which you can base decisions regarding this and other brownfield legislation that may come before you.

This assessment will help you, your constituents and other stakeholders sort through their options for the particular site and it will also provide a concrete, close-to-home example that you can use in evaluating the type of reforms necessary to revitalize brownfield sites all across this country.

If the members of this Committee are interested in pursuing my genuine offer of a private sector, candid assessment, we can work either directly with your individual offices or coordinate this effort through the staff for this subcommittee.

Just this week I returned from the annual meeting of the U.S. Conference of Mayors. Despite the difficult issues Mayors face, the sense of optimism and willingness to find new ways to tackle old problems is always energizing.

As I'm sure you know, mayors across this country list brownfield revitalization as one of their top priorities.

And it is no wonder. Revitalizing brownfield sites is a way to restore communities, create jobs, expand tax roles, and create a healthier environment. Yet, progress is painfully slow. The U. S. Chamber of

Commerce estimates that, at the current rate of remediation, it will take 10,000 years to clean up our nation's brownfields. While I, like many of you, find this timetable to be unacceptable, I am convinced that public and private entities can work together to leverage each other's strengths to accelerate the pace of brownfield cleanup.

Please know that as you consider the pending reauthorization and as you look to other incentive programs, Cherokee Investment Partners is willing to do whatever it can to help advance the national goal of revitalizing America's brownfield sites.

Again, thank you very much for the opportunity to speak here today, and I look forward to working with you and your staff to evaluate high priority sites in your districts. I yield any remainder of my time and welcome

questions.

BIOGRAPHY OF JONATHAN PHILIPS

Jonathan Philips is Senior Director of Cherokee Investment Partners, LLC. He specializes in investment, strategic and structuring activities. Through his work identifying, analyzing and executing transactions, Mr. Philips has forged partnerships with communities, organizations, agencies and officials. In addition to his deal and strategic work, Mr. Philips helped architect the federal 2005 Brownfield Revitalization Act that was enacted by Congress and signed by the President in October 2004. Mr. Philips also created the *US Conference of Mayors—Cherokee Investment Partners Community Revitalization Initiative*, a first-of-its-kind national public-private partnership to fast-track the cleanup and revitalization of property in cities and towns across America.

Prior to joining Cherokee, he served as a senior executive officer and General Counsel of a closely held company headquartered in New York City where he identified, structured and closed private equity investment and strategic relationships. Previously, Mr. Philips practiced as a corporate attorney with Davis Polk & Wardwell in the Merger and Acquisitions and Capital Markets groups, where he represented private equity, banking and corporate clients in over 25 public and private transactions, comprising over a billion dollars of closing value. Before Davis Polk, Mr. Philips founded and led a Manhattan-based consulting company and, previously, worked as a strategic management consultant. Mr. Philips has served as an advisor to corporate and nonprofit entities and is actively involved with several nonprofits throughout the country and is a frequent speaker on brownfields and other topics. Mr. Philips was honored to provide testimony to the U.S. Congress on April 5, 2005 on the topic “*Lands of Lost Opportunity: What Can Be Done to Spur Development at America's Brownfield Sites?*”

(<http://reform.house.gov/UploadedFiles/J.PhilipsTestimonyFinal3.pdf>) and on September 13, 2005 on the topic “*Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving*

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America's Brownfields Problem?" (<http://reform.house.gov/UploadedFiles/Philipsweb2.pdf>) . He received his law degree from the Yale Law School, where he was an Olin Fellow in Law and Economics, and his Bachelors degree from the University of Virginia, where he was an Echols Scholar with double Highest Distinction. He and his wife, Eva, are parents of three children.

